2

No. 90-955

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ALMONT SHIPPING COMPANY, INC.,
A NORTH CAROLINA CORPORATION,

Petitioner,

v.

PETER BROWNE RUFFIN; WARD KING; JOHN E. DYER; WILLIE SLOAN; WILLIAM PINER; HENRY ARRON ROSE, IN THEIR CAPACITIES AS TRUSTEES FOR THE EMPLOYERS-ILA PENSION, WELFARE & VACATION FUND FOR THE NORTH CAROLINA PORTS AREA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The question presented is whether under the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §1381 *et seq.*, a pension plan using the modified presumptive method of calculating withdrawal liability, which had unfunded vested benefits at the end of the last plan year before September 26, 1980 and which had no unfunded vested benefits (i.e., was fully funded) at the end of the plan year preceding an employer's withdrawal, may assess withdrawal liability against such employer.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	4
I. THE LACK OF CONFLICT IN THE CIRCUITS	4
II. THE ISSUE IS NOT OF GENERAL IMPORTANCE	5
III. THE DECISION OF THE COURT BELOW DOES NOT CONFLICT WITH DECISIONS OF THIS COURT	6
IV. OTHER CONSIDERATIONS	7
CONCLUSION	8
APPENDIX:	
Multiemployer Pension Plan Amendments Act of 1980, P.L. 96-364, 94 Stat. 1208, 29 U.S.C. § 1381 *et seq.*	
29 U.S.C. § 1381	1a
29 U.S.C. § 1391	2a

TABLE OF AUTHORITIES

Cases: Page

Ben Hur Construction Co. v. A.S. Goodwin, 784 F. 2d 876 (CA 8 1986) 5

Berkshire Hathaway, Inc. v. Textile Workers Pension Fund, 874 F. 2d 53 (CA 1 1989) 4, 5

Pension Benefit Guaranty Corporation v. R. A. Gray & Company, 467 U.S. 717 (1984) 6, 7

Wise v. Ruffin, 914 F. 2d 570, 581 (CA 4 1990) 5

Statutes:

Multiemployer Pension Plan Amendments Act of 1980,

P.L. 96-364, 96 Stat. 1208, 29 U.S.C. §1381 *et seq* 1

29 U.S.C. § 1391 . . . . 1, 7

29 U.S.C. § 1391(b) 2

29 U.S.C. § 1391(c)(2) 2

29 U.S.C. § 1391(c)(3) 2

29 U.S.C. § 1391(c)(4) 2

29 U.S.C. § 1391(c)(5) 2

Other Sources:

H. R. Rep. No. 96-869, 96th Cong. 2nd Sess., pt. 1 (Education and Labor Committee Report) at 77 (1980) reprinted in 1980 U.S. Code Cong. and Admin. News 2918, 2945 2

Effects of Liabilities Assessed Employers Withdrawing from Multiemployer Pension Plans, U.S. General Accounting Office, GAO/HRD-85-16, (March 14, 1985) 7

OTHER SOURCES - Continued

Page

Multiemployer Pension Plans: Withdrawal Liability in Plans Without Unfunded Vested Benefits, Notice of Interpretation, Pension Benefit Guaranty Corporation, Vol. 51 *Federal Register*, 47, 342 (1986) 3,5,7

Opinion Letter 83-19, Pension Benefit Guaranty Corporation, (August 11, 1983) . . 3

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BRIEF OF RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

In 1980, Congress enacted the Multiemployer Pension Plan Amendments of 1980, P. L. 96-364, 96 Stat. 1208, 29 U.S.C. §1381 *et seq.*, (the "Act"). The Act imposes withdrawal liability, in certain circumstances, on employers who withdraw from multiemployer pension plans. Section 1391 of the Act outlines five alternative methods of

computing withdrawal liability. These methods have commonly been called the presumptive method, 29 U.S.C. §1391(b), the modified presumptive method, 29 U.S.C. §1391(c)(2), the rolling-five method, 29 U.S.C. §1391(c)(3), the direct allocation or direct attribution method, 29 U.S.C. §1391(c)(4) and the special PBGC method, 29 U.S.C. §1391(c)(5). These methods yield different computations of withdrawal liability.

The Employers-I.L.A. Pension Fund for the North Carolina Ports Area duly adopted the modified presumptive method for assessing withdrawal liability. This method, although complex in its particulars, basically provides that withdrawal liability for employers who were participants in the plan on September 26, 1980 is the sum of two separate figures: (a) the employer's proportionate share of the plan's unfunded vested benefits prior to September 26, 1980, reduced in level annual installments over a fifteen year period, and (b) the employer's share of the plan's unfunded vested benefits at the end of the year preceding the employer's withdrawal. Under this formula, employers who were participants in the plan in 1980 shoulder a fixed liability for the pre-1980 unfunded vested benefits, which liability is reduced only through the 15 year amortization.[1]

Petitioners Almont and Stevedores were employer participants in the Fund on September 26, 1980. When they withdrew from the Fund in 1987 the Fund computed their withdrawal liability under the modified presumptive method. In doing so, the Fund added Almont/Stevedores' share of the plan's pre-1980 unfunded vested benefits to

[1] The legislative history reveals that Congress's purpose in freezing the liability for pre-1980 unfunded vested benefits was to impose upon existing employers the responsibility for unfunded liabilities at the time the Act was passed, so as not to saddle newly entering employers with such liabilities and thereby discourage them from joining the plan. H.R. Rep. No. 96-869, 96th Cong., 2nd Sess., pt. 1 (Education and Labor Committee Report) at 77 (1980) reprinted in 1980 U.S. Code Cong. and Admin. News 2918, 2945.

their share of the plan's post-1980 unfunded vested benefits. Because the plan had assets in excess of vested benefits in the year preceding withdrawal, the post-1980 figure partially offset Almont/Stevedores' share of the pre-1980 unfunded vested benefits. The net result of the plan's calculations was a positive withdrawal liability, notwithstanding the plan's fully funded status as of the year-end preceding withdrawal.[2]

Throughout the course of this litigation, Almont and Stevedores have not challenged the Fund's calculations of withdrawal liability under the modified presumptive method. Rather, they argue that the modified presumptive method should be disregarded when the plan has no unfunded vested benefits in the year preceding withdrawal. In large part they rely on a 1986 "notice of interpretation" by the Pension Benefit Guaranty Corporation ("PBGC") which reversed an earlier 1983 opinion from the same agency. (See, Notice of Interpretation, 51 Federal Register 47,342 (1986), reprinted in petitioner's Appendix at 48(a) through 56(a), and Opinion Letter 83-19, (August 11, 1983). The PBGC's 1986 notice acknowledged that its earlier 1983 opinion "seemed to be compelled by a literal reading of the statutory language." The 1986 notice nevertheless rejected this "apparently straightforward reading" of the statute and concluded that no assessment of withdrawal liability can be made when the plan has no unfunded vested benefits as of the end of the preceding plan year. (Notice of Interpretation, petitioner's Appendix 52a-53a) The Fourth Circuit rejected this attempt to rewrite plain congressional language and held that the absence of unfunded vested benefits in the year

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[2] Almont's amortized share of pre-1980 unfunded benefits was $87,792. Almont's share of post-1980 overfunding was $7,538. Stevedores' amortized share of the pre-1980 unfunded vested benefits was $217,918. Stevedores' share of the post-1980 overfunding was $100,166. By offsetting the post-1980 overfunding against the pre-1980 underfunding, the Fund computed withdrawal liability of $80,254 for Almont and $117,751 for Stevedores.

preceding withdrawal does not immunize Almont/Stevedores from liability which application of the modified presumptive method imposes on them.

REASONS FOR DENYING THE WRIT

I. The Lack of Conflict in the Circuits.

There is no conflict in the circuits which requires the attention of this Court. The decision of the First Circuit in *Berkshire Hathaway, Inc. v. Textile Workers Pension Fund*, 874 F.2d 53 (CA 1 1989), involved calculation of withdrawal liability under the direct allocation method, a method which is different from the modified presumptive method involved here and is based on different statutory language which is arguably more susceptible of the interpretation advanced by petitioners in this case. The Fourth Circuit addressed this conflict and concluded that the *Berkshire Hathaway* decision was not necessarily at odds with its own. The Fourth Circuit stated:

> "In contrast to the modified presumptive method, the direct allocation method used in *Berkshire Hathaway* does not so explicitly require inclusion of UVB [unfunded vested benefits] amounts for a year other than the year immediately preceding withdrawal. To the contrary, the statutory description of the method used by the plan in *Berkshire Hathaway* contains explicit directives to base computations upon the year preceding withdrawal . . . .
>
> The plan in *Berkshire Hathaway* argued from congressional silence that it would be wrong to conclude that the quoted provision assumes the existence of some plan unfunded vested benefits before computing each employer's share. Thus, unlike the Funds before us, who simply ask that we apply pellucidly clear statutory directives to

> include UVBs [unfunded vested benefits] as of 1980 in the withdrawal liability calculation, the plan in *Berkshire Hathaway* asked the court to inject a certain meaning into language that was, at best, from the plan's perspective, ambiguous".
> *Wise v. Ruffin*, 914 F.2d 570, 581 (CA 4 1990), Petitioner's Appendix at 24a-25a.

If there is a conflict in the circuit courts, it is between the Eighth Circuit's decision in *Ben Hur Construction Co. v. A.S. Goodwin*, 784 F.2d 876 (CA 8 1986), and the *Berkshire Hathaway* decision, both of which involved the direct attribution or direct allocation method. A decision in this case, involving the modified presumptive method, will not necessarily resolve any such conflict.

II. The Issue Is Not of General Importance.

There is no evidence of a general interest in the issue in this case. For instance, when the PBGC solicited public comment on the question, it received only eighteen comments before announcing its Notice of Interpretation in December, 1986 (Petitioner's Appendix 48a and 50a). Research for the period 1980 through 1990 reveals only three United States district court cases dealing with the question. They are the three cases appealed in *Ben Hur*, *Berkshire Hathaway* and this case.

Petitioner points out on page 8 of the petition that in 1989 there were approximately 2,300 multiemployer pension plans and that a majority of all plans had been fully funded during the years 1980 through 1989. If only three of 2,300 plans have litigated the question in this case, the issue cannot be said to be "of general importance".

Significantly, the issue in this case is rapidly becoming moot. In 1995, all plans using the modified presumptive method will have fully amortized their pre-1980 unfunded vested benefits. As of that date, withdrawal liability will be calculated solely upon the basis of unfunded vested

benefits in the year preceding withdrawal and will not include any component for pre-1980 unfunded benefits. After 1995, if a plan is fully funded in the year preceding withdrawal there will be no withdrawal liability. This is the result petitioner argues for here. There is little to be gained in addressing an issue of statutory construction which will become irrelevant in less than five years.

One possible reason the issue in this case has not received much airing in the courts is that plans are free to change the method by which withdrawal liability is calculated. One such method, the "rolling five method", bases withdrawal liability exclusively on the plan's unfunded vested benefits in the year preceding withdrawal. Under the rolling five method, if there are no unfunded benefits in the year preceding withdrawal there is no withdrawal liability. Plans which desire to eliminate withdrawal liability when the plan is fully funded may always elect to change to the rolling five method. This is a decision which plan trustees, who are armed with knowledge of the plan's financial health and who have a fiduciary duty to maintain the financial integrity of the plan, are in the best position to make.[3]

III. The Decision of the Court Below Does Not Conflict with Decisions of this Court.

Petitioner contends that the Fourth Circuit decision below is in conflict with the Court's decision in *Pension Benefit Guaranty Corporation v. R. A. Gray & Company*, 467 U.S. 717 (1984). No such conflict exists. The issue in *Pension Benefit Guaranty Corporation v. Gray* was whether

[3] Almont/Stevedores recognized that the rolling-five method would eliminate their liability and they urged the arbitrator, unsuccessfully, to find that the Fund trustees had changed to that method. See, In the Matter of Arbitration between Almont Shipping Co., Inc. and Stevedores, Inc. and Employers-ILA North Carolina Ports Area Hourly Paid Employees Pension Plan, decided July 3, 1988, reprinted in petitioner's Appendix at 33a-47a.

retroactive application of the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 violated due process. That case did not address the issue of the proper application of the various formulas for computing withdrawal liability nor the question of whether those formulas could be disregarded when the plan has no unfunded benefits in the year preceding withdrawal. The passage from the *Gray* opinion quoted by petitioner simply constitutes a shorthand description of withdrawal liability and the meaning of the words "unfunded vested benefits." Clearly, the Court in *Gray* was not attempting to condense the seven pages of 29 U.S.C. §1391 into a single sentence or to obliterate, without discussion, statutory methods such as the modified presumptive method, in which the employer's share of the plan's unfunded benefits is measured at two separate dates.

IV. Other Considerations.

Petitioner argues that the Fourth Circuit decision is contrary to Congressional intent. The facts show otherwise. The General Accounting Office, in a 1985 report, drew Congress's attention to the fact that the statutory formulas can produce withdrawal liability even though a plan is fully funded, and the GAO suggested an amendment to eliminate such liability. (General Accounting Office, Effects of Liabilities Assessed Employers Withdrawing from Multiemployer Pension Plans, GAO/HRD-85-16, March 14, 1985). Congress has amended the pension laws several times since 1985 but has not made the suggested amendment.

The Pension Benefit Guaranty Corporation recognized in its 1986 Notice of Interpretation that its interpretation created questions as to how the statutory methods for calculating withdrawal liability should be applied when a plan that is fully funded is no longer so. (Petitioner's Appendix p. 55a) The PBGC promised to issue a notice of

proposed rulemaking to deal with these important questions. No such rulemaking has been forthcoming. Until the PBGC engages in such rulemaking, review of this issue by the Court would be inappropriate because the Court would not have the benefit of the agency's thinking concerning some of the more incongruous ramifications of its 1986 interpretation.

CONCLUSION

Contrary to petitioner's contentions, there is no clear conflict in the circuits and no conflict with any Supreme Court decision. The issue posed by this case has not generated much interest and is short lived in duration. Far from defying logic and Congressional intent, the Fourth Circuit's opinion adopts the plain meaning of the Act and effectuates its purposes.

For the foregoing reasons, the petition for writ of certiorari filed by Almont should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980

P.L. 96-364, 94 Stat. 1208, 29 U.S.C. §1381 et seq.

29 U S.C. §1381. Withdrawal liability established; criteria and definitions.

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a) of this section—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term "complete withdrawal" means a complete withdrawal described in section 1383 of this title.

(3) The term "partial withdrawal" means a partial withdrawal described in section 1385 of this title.

29 U.S.C. §1391. Methods for computing withdrawal liability.

(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan

The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

(1) Except as provided in subsections (c) and (d) of this section, the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of—

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is negative, the unfunded vested benefits allocable to the employer shall be zero.

(2) (A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending—

(i) after such date, and

(ii) before the plan year in which the withdrawal of the employer occurs.

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which—

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of—

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of—

(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such years by employers who had withdrawn from the plan in the year in which the change arose.

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of—

(A) such unamortized amount; multiplied by—

(B) a fraction—

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers—

(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

(II) who had not withdrawn from the plan before such date.

(4) **(A)** An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional shares of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of—

(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, or similar proceedings.

(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 1389, 1399(c)(1)(B), or section 1405 of this title against an employer to whom a notice described in section 1399 of this title has been sent, and

(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of—

(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) the fraction defined in paragraph (2)(E)(ii).

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under

paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection (b) or (d) of this section. A plan described in section 1383(b)(1)(B)(i) of this title (relating to the building and construction industry) may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in section 1383(b)(1)(A) of this title shall be determined in a manner different from that provided in subsection (b) of this section.

(2) **(A)** The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of—

(i) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of—

(i) an amount equal to—

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

(ii) a fraction—

(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer who withdrew from the plan under this part during those plan years.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of—

(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(B) a fraction—

(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

(4) (A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of—

(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer

is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying—

(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

(ii) a fraction—

(I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and

(II) the denominator of which is the value of all nonforfeitable benefits under the plan as of the end of the plan year

(D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance with one of the following methods which shall be adopted by the plan by amendment:

(i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and

(II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;

(ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and

(II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction—

(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which are attributable to service with the employer; and

(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year in which

an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to—

(i) an amount equal to—

(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

(ii) an amount equal to—

(I) the value of the plan assets as of the end of such plan year, reduced by

(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to

determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute under the plan in the plan year in which the employer withdraws.

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3) of this section; applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) of this section shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of Title 26, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c) of this section.

(2) Sections 1384, 1389, 1399(c)(1)(B), and 1405 of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) of this section shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.